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## Smart Governance for Smart Growth: The Need for Regional Governments

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**Symposium on Urban Sprawl:  
Local and Comparative Perspectives on  
Managing Atlanta's Growth**

**SMART GOVERNANCE FOR SMART GROWTH:  
THE NEED FOR REGIONAL GOVERNMENTS\***

Janice C. Griffith<sup>†</sup>

**ABSTRACT**

The sprawling expansion of the nation's mega cities into outer rings of further development depletes land in a natural state and increases air and water pollution. To sustain long-term growth, a metropolitan area must make major investments in its transportation, sewer, water supply, and wastewater infrastructures to diminish growth related environmental harms. Transportation, land use, and water policy decisions must be coordinated throughout a metropolitan area to ensure that each locality assumes its fair share of growth related costs and does not resort to cheaper solutions that lack environmental sensitivity.

This Article argues that the model government for a sprawling metropolitan area should be formed along regional rather than local boundaries. Most urban areas contain a large number of local governmental units whose borders were fixed along lines that no longer comport with today's mobile society. When these governments make decisions that overburden the region's infrastructure, they undermine the area's long term prosperity. A metropolitan-wide government with jurisdiction over localities within its borders best provides coordinated planning and ensures

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enforcement of regulations necessary to implement smart growth policies. The public, despite its awareness of clogged urban highways and its concern for a clean water supply, makes few connections between sprawl related problems and the country's system of fragmented government.

Many states, like Georgia, have created a patchwork of state agencies to control sprawl's ill effects upon specific resources like water, open space, and air. Because each authority usually addresses only one environmental harm, an overall coordinated approach to sprawl remains lacking. This Article views the creation of an Atlanta metropolitan (regional) government as unlikely and reviews the Georgia state agencies created in the last three years to combat sprawl. It compares and contrasts the newly created Georgia Regional Transportation Authority, the Georgia Greenspace Commission, and the Metropolitan North Georgia Water Planning District. The success of these state bodies in managing the environmental consequences of the Atlanta area's spectacular growth remains to be seen.

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## INTRODUCTION: IMPEDIMENTS TO SMART GROWTH

In 1900 the City Beautiful movement bloomed brightly in the United States.<sup>1</sup> Once suburban sprawl became the standard pattern of development in the post World War II era, urban areas lost their vitality.<sup>2</sup> Today, at the advent of the twenty-first century, we have the opportunity to restore the earlier urban bloom by transforming our metropolitan areas into more livable, pedestrian friendly, and environmentally sensitive places. We need to replace decentralized sprawl with smarter growth techniques that will free up more land for protected open space through more compact residential and commercial developments.

Sprawl has been described as “unplanned, uncontrolled, and uncoordinated single-use development that does not provide for an attractive and functional mix of uses and/or is not functionally related to surrounding land uses . . . .”<sup>3</sup> Sprawl results in much lower population density than characterized our early cities.<sup>4</sup> This low density development frequently begins at the fringe of already developed areas,<sup>5</sup> but it may also cause new

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1. The 1893 Columbian Exposition in Chicago sparked the City Beautiful movement in the United States. See DOUGLAS FRANTZ & CATHERINE COLLINS, *CELEBRATION, U.S.A.: LIVING IN DISNEY'S BRAVE NEW TOWN* 214 (1999).

2. See ANDRES DUANY ET AL., *SUBURBAN NATION: THE RISE OF SPRAWL AND THE DECLINE OF THE AMERICAN DREAM* 4-5 (2000); DAVID RUSK, *CITIES WITHOUT SUBURBS* 7-8 (2d ed. 1995).

3. ARTHUR C. NELSON & JAMES B. DUNCAN, *GROWTH MANAGEMENT PRINCIPLES AND PRACTICES* 1 (1995); see DUANY ET AL., *supra* note 2, at 3-20 (describing the components and causes of sprawl).

4. RUSK, *supra* note 2, at 7-9.

5. See Timothy J. Dowling, *Reflections on Urban Sprawl, Smart Growth, and the*

developments to be scattered or removed from existing settlements resulting in isolated development.<sup>6</sup>

Smart growth embodies a range of techniques to meet anticipated growth without sprawl through “smarter” developments that incorporate mixed uses, flexible designs, and greater density than today’s suburban residential patterns provide.<sup>7</sup> Flexible designs enable buildings to be placed so as to preserve natural features such as trees, streams, and steep slopes.<sup>8</sup> Through compact building patterns, land can be used more efficiently, thereby reducing infrastructure and development costs and making possible the preservation of more open space and tree cover.<sup>9</sup> These smart growth developments take many forms. They may be identified as cluster developments, open space developments, conservation developments, higher density developments, traditional neighborhood developments, new urbanism developments, transit-oriented developments, and master planned communities/planned unit developments.<sup>10</sup>

*Fifth Amendment*, 148 U. PA. L. REV. 873, 874 (2000).

6. See NELSON & DUNCAN, *supra* note 3, at 1.

7. The American Planning Association describes the most notable smart growth principles as: (1) efficient use of land resources; (2) full use of urban services; (3) mix of uses; (4) transportation options; (5) detailed, human-scale design; and (6) implementation. AM. PLAN. ASS’N, *THE PRINCIPLES OF SMART DEVELOPMENT* 7-10 (1998); see also Janice C. Griffith, *The Preservation of Community Green Space: Is Georgia Ready To Combat Sprawl with Smart Growth?*, 35 WAKE FOREST L. REV. 503, 508-71 (2000) (describing smart growth approaches to contain urban sprawl).

8. See NAT’L ASS’N OF HOME BUILDERS, *SMART GROWTH: BUILDING BETTER PLACES TO LIVE, WORK AND PLAY* 10 (1999).

9. See *id.* at 10-11.

10. See *id.* Cluster development entails decreasing the lot size from that permitted and leaving the saved space as permanently protected open space. See *id.* at 10. Cluster developments may also be termed “open space development” or “conservation development.” See *id.* at 10-11. Through smaller building lots, row houses, or multifamily structures, higher density development makes it possible to preserve more land and create pedestrian friendly communities that incorporate mixed uses. See *id.* at 11. Traditional neighborhood developments, also called “new urbanism developments,” “emphasize walking, a mix of housing types and commercial uses, town centers and public spaces.” *Id.* Transit-oriented developments are realized by building traditional neighborhood developments close to mass transit facilities. See *id.* Master planned communities, which are developed in a unified fashion rather than on a lot-by-lot basis, usually incorporate one or more compact development options to achieve more varied neighborhoods and more affordable housing. See *id.* at 11-12.

A number of impediments inhibit the use of smart growth techniques. Euclidean<sup>11</sup> zoning ordinances in existence throughout the country zone land into separate use districts with specific mandates as to lot size, use, and the permissible size, height, and location of buildings on a particular lot. In contrast, smart growth techniques call for mixing uses within a closer proximity to each other. For example, smart growth developers may place a small shopping center within walking distance of a planned residential community to decrease automobile dependency.

A Euclidean zoning ordinance presents several advantages. Its district layout rigidity makes it possible for builders and owners to know precisely how land can be developed, and its simplicity enables the smallest municipality to administer this form of zoning with speed and certainty.<sup>12</sup> In contrast, the use of smart growth techniques requires planners to make judgments about the feasibility of employing these more flexible planning tools in a particular proposed development. They must review plans and weigh alternative land use and design options to properly implement smart growth. The lack of municipal resources to provide this more costly expertise impedes the full scale use of smart growth techniques.

The hiring of planners capable of administering smart growth development cannot be overemphasized. Developers frequently try to maximize profits. They may arrive at the zoning office with a plan marked "traditional neighborhood development" that places commercial development in close proximity to residential development. Upon further examination, the plan shows that residents must pass through a locked gate and cross several busy street corners in order to shop. Likewise, without oversight, the public squares or plazas that neo-traditional developments emphasize may turn into nothing more than an active recreational complex.

To make smart growth work, all municipal codes, as well as zoning ordinances, must be integrated to provide the type of

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11. The term "Euclidean" comes from the U.S. Supreme Court decision, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), which upheld the power of municipalities to zone property into classes of use districts.

12. See RICHARD F. BABCOCK, *THE ZONING GAME: MUNICIPAL PRACTICES AND POLICIES* 132-33 (1966).

flexibility demanded. An ordinance regulating tree removal that requires the retention of a certain number of trees on a lot-by-lot basis, for example, might prohibit the developer of a planned community from offsetting compact development in one area with the preservation of a large open area with tree cover elsewhere. The enactment of model smart growth codes in all regionally tied areas experiencing rapid growth would greatly facilitate the use of these techniques. The recently enacted Georgia statute creating the Metropolitan North Georgia Water Planning District, for example, calls for the “[d]evelopment of regionally consistent policies, model ordinances, and minimum standards of performance for local governments relating to the creation and implementation of the plans developed by the district.”<sup>13</sup>

Political opposition to smart growth development may further impede its implementation. Many people in the United States prefer living in a rural environment with low density.<sup>14</sup> They will keep moving farther and farther out from the central city when further development engulfs their suburban residences.<sup>15</sup> North Americans value independence and freedom from public regulation. Before they are willing to adopt more compact living, they must come to believe that the benefits of smart growth outweigh the detriments of sprawl. Greater density living will not be palatable until the harms caused by sprawl—congested highways, air pollution, diminished water quality, and loss of open space—are viewed as unsolvable without the use of more smart growth techniques. Thus, even if planners and lawyers draw up a perfect smart growth code, political pressures may prevent its adoption or compromise its administration once adopted.

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13. See O.C.G.A. § 12-5-574(4) (2001).

14. Professor Clayton Gillette describes the issue of sprawl as one not arising solely from the preferences of some people for low-density living, but rather as stemming from the fact that this group “[does] not bear the entire cost of their choice,” which is imposed on others “in the form of pollution, traffic congestion, and loss of open space.” Clayton P. Gillette, *Comment: Interest Groups in the 21st Century City*, 32 URB. LAW. 423, 429 (2000).

15. See H.M. Cauley, *Overlook at Timberline: Community in Forsyth Offers Variety of Amenities*, ATLANTA J. & CONST., Feb. 11, 2001, at HF10 (describing Mike and Kathy McMullen’s decision to buy a new house in the metro Atlanta area as one guided by their view that “farther out was definitely for them”).

Comfort with the status quo and fear of the unknown cause further resistance to the adoption of more smart growth techniques. Smart growth cannot be implemented without trust and cooperation between planners and developers. It requires a willingness to be flexible. Powerful stake holders in the continuation of existing land use laws, including the road building and motor vehicle industries, may thwart the smart growth movement. The patronage opportunities provided by these businesses may further influence public officials and legislators to support policies that encourage greater sprawl. The Northern Arc, a proposed four-lane divided highway to be constructed thirty miles north of Atlanta, for example, comes with a price tag of \$1.2 billion.<sup>16</sup> Satisfied with the Northern Arc's potential to generate growth, a number of large corporations have endorsed the plan already.<sup>17</sup>

The impediments to smart growth leave unanswered the question of how it can be implemented. One obvious answer lies in the creation of a more centralized government that can exercise control over all of the areas undergoing growth pressures in a sprawling metropolitan region. This Article argues that a regional metropolitan government can best effectuate smart growth policies. Part I of the Article presents the reasons why local governance should be replaced by a regional government in metropolitan areas that need to combat sprawl with smart growth policies. Part II argues that a representative regional government is preferable to the exercise of regional control by non-elected public authority officials. Part III examines the unlikelihood of representative regional governance in Georgia under the state's existing legal framework. Finally, Part IV examines the governmental structures that have been created in Georgia to deal with sprawl's effects.

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16. The Georgia Department of Transportation estimated the cost of the Northern Arc to exceed \$1.2 billion. See Kelly Simmons, *Northern Arc: As Governor Pushes Plan, Debate Flares Again: Will It Help People Along Route?*, ATLANTA J. & CONST., Feb. 19, 2001, at E8.

17. See *id.*



# I. THE NEED FOR REGIONAL GOVERNANCE IN METROPOLITAN AREAS

Sprawl results from decisions made by the marketplace and the various levels of government. This form of growth rarely respects municipal political boundary lines.<sup>18</sup> Although the problems associated with sprawl extend beyond these local jurisdictions, most growth management programs have been administered at the local level due to the placement of land use powers in counties and municipalities.<sup>19</sup> As long as public decision making remains under the jurisdiction of multi-governments in a sprawling area, there will be no coordinated effort to address sprawl's effects.<sup>20</sup> In a large metropolitan area, only a coherent governmental structure that encompasses the entire region can combat sprawl. Mass transit options, which could ease highway congestion and decrease air pollution, for example, cannot be implemented without an integrated transportation system that serves an entire region.<sup>21</sup>

To effectuate smart growth management, policymakers must recognize the interdependence of all local and state land use decisions. The external costs of growth spread across jurisdictional borders and require a coherent common approach. Air pollution, water quality violations, and the depletion of natural resources do not stop at the county or city line. The costs of transit systems, if not shared by users in the entire region, place extra burdens on the public entities that fund and provide transit service. Outlying areas that encourage low density and

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18. See ROBERT H. FREILICH, *FROM SPRAWL TO SMART GROWTH: SUCCESSFUL LEGAL, PLANNING, AND ENVIRONMENTAL SYSTEMS* 66-67 (1999).

19. See NELSON & DUNCAN, *supra* note 3, at 19.

20. See Rose A. Kob, *Riding the Momentum of Smart Growth: The Promise of Eco-Development and Environmental Democracy*, 14 TUL. ENVTL. L.J. 139, 143 (2000) (concluding that the fragmentation of local governments in suburban areas creates sprawl). Professor William Buzbee has pointed out the mismatch between sprawl and the country's existing legal structures. See William W. Buzbee, *Sprawl's Political-Economy and the Case for a Metropolitan Green Space Initiative*, 32 URB. LAW. 367, 371 (2000). "[S]prawl's multi-jurisdictional reach usually means that no local government has authority to address sprawl's ills or create policies to discourage societally harmful forms of sprawl." *Id.*

21. Cf. Joey Ledford, *Transit Advocates Heartened by HOV Lanes, Buses Due in Fall*, ATLANTA J. & CONST., Feb. 5, 2001, at E5 (quoting the view of Charles "Chick" Krautler, executive director of the Atlanta Regional Commission, that Atlanta lacks "an integrated transportation system that serves the entire region").

large lot zoning shift growth away from the central city and leave the region saddled with increased air pollution and traffic congestion caused by longer automobile commutes. Furthermore, if one locality exercises its land use powers so as to permit undesirable or harmful development at its borders, it adversely affects adjoining communities.

The fact that local governments lack consistency with optimal service areas or with the scientific imperatives of natural resource preservation further demonstrates the need for regional governance.<sup>22</sup> Metropolitan Atlanta, covering ten counties,<sup>23</sup> the city of Atlanta, and sixty-three other municipalities,<sup>24</sup> lies within five major river basins.<sup>25</sup> The Chattahoochee River Basin, the supplier of eighty percent of the region's water, originates seventy-five miles north of Atlanta.<sup>26</sup> Rejecting local planning for the management of the Atlanta region's water resources, the Clean Water Initiative Task Force, created in April 2000 by metro Atlanta business leaders, recommended the creation of a regional metro planning district to coordinate regional storm water, wastewater, and water supply management.<sup>27</sup> The Task Force found that solutions to the region's water supply problems could not be achieved

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22. See A. Dan Tarlock, *Local Government Protection of Biodiversity: What Is Its Niche?*, 60 U. CHI. L. REV. 555, 558 (1993). Professor Tarlock argues that biodiversity protection involving decentralized land and water regulation by multi-local units of government makes it more complicated than toxic risk reduction that requires the application of centralized standards to specific industrial activities. See *id.* at 557-58.

23. See ATLANTA REG'L COMM'N, *Introduction to the Regional Development Plan, in A FRAMEWORK FOR THE FUTURE: ARC'S REGIONAL DEVELOPMENT PLAN* (Oct. 1999).

24. See Atlanta Reg'l Comm'n, *About the Atlanta Regional Commission*, at [http://www.atlantaregional.com/movers/about\\_arc.html](http://www.atlantaregional.com/movers/about_arc.html) (last visited May 16, 2001).

25. See CLEAN WATER INITIATIVE, A PROJECT OF THE METRO ATLANTA CHAMBER OF COMMERCE AND THE REGIONAL BUSINESS COALITION, INC., *FINAL REPORT OF THE CLEAN WATER INITIATIVE 2* (Nov. 2000).

26. See *id.* The Flint River, the South River, the Yellow River, and the Alcovy River also flow through the Atlanta region. See *id.* The headwaters of the Flint River originate at Hartsfield Airport, the South River starts close to the state capitol building, and the headwaters of the Yellow and Alcovy Rivers originate near Lawrenceville. See *id.*

27. See *id.* at 14. The Task Force, a thirty-eight-member group, was formed through a joint project of the Metro Atlanta Chamber of Commerce and the Regional Business Coalition, Inc. See *id.* at 1. The Task Force made a number of recommendations in its November 2000 Final Report. See *id.* at 14-19. For a discussion of other Task Force recommendations, see *infra* notes 160-61 and accompanying text.

without regional cooperative efforts that extended beyond local boundaries.<sup>28</sup>

The need for regional approaches to land use planning and growth management issues has been recognized for many years.<sup>29</sup> Alarmed about the inability of local governments to manage growth effectively, state governments began in the 1970s to take a more active role in exercising control over environmental and growth management problems.<sup>30</sup> Focusing beyond local interests, a number of states adopted statewide planning measures and explored regional solutions to sprawl—a pattern that continues today.<sup>31</sup> Elements of these state comprehensive planning statutes include: (1) state imposed planning on local governments;<sup>32</sup> (2) state requirements for the content of local plans, including specific plan elements;<sup>33</sup> (3) the creation of statewide goals and policies to direct both state and local land use decision making for the purpose of achieving greater consistency;<sup>34</sup> (4) the creation of regional agencies to

28. See CLEAN WATER INITIATIVE, *supra* note 25, at 10. The Task Force found that most local governments had invested little time or resources in storm water management and that efforts had not been coordinated across jurisdictional boundaries. See *id.* at 6.

29. See NELSON & DUNCAN, *supra* note 3, at 19.

30. See *id.* Federal funding for state planning efforts and citizen initiatives, in part, caused this shift toward greater state involvement in the planning process. See *id.*

31. See SECTION OF URBAN, STATE AND LOCAL GOVERNMENT LAW, AM. BAR ASS'N, STATE & REGIONAL COMPREHENSIVE PLANNING: IMPLEMENTING NEW METHODS FOR GROWTH MANAGEMENT, at ix-x (Peter A. Buchsbaum & Larry J. Smith, eds., 1993) [hereinafter STATE PLANNING].

32. See Rodney L. Cobb, *Toward Modern Statutes: A Survey of State Laws on Local Land-Use Planning*, in AM. PLAN. ASS'N, PLANNING COMMUNITIES FOR THE 21ST CENTURY, A SPECIAL REPORT OF THE AMERICAN PLANNING ASSOCIATION'S GROWING SMART PROJECT 9-24 (1999) (surveying states with legislation mandating local land use planning and listing plan elements); NELSON & DUNCAN, *supra* note 3, at 20 ("The most basic state mandate is that local governments prepare and adopt a comprehensive plan to guide their land-use regulations and decisions.").

33. See Cobb, *supra* note 32, at 11.

34. See NELSON & DUNCAN, *supra* note 3, at 20; John M. DeGrove, *The Emergence of State Planning and Growth Management Systems: An Overview*, in STATE PLANNING, *supra* note 31, at 4 (stating that the consistency concept is the foundation for all comprehensive planning and growth management systems). Georgia adopted a statewide comprehensive planning program in 1989 that integrates local and regional plans. See NELSON & DUNCAN, *supra* note 3, at 28. Oregon and Florida have taken measures to require local governments' plans to comply with state policy. See Thomas G. Pelham, *The Florida Experience: Creating a State, Regional, and Local Comprehensive Planning Process*, in STATE PLANNING, *supra* note 31, at 95, 99-108 (analyzing Florida's state, regional, and local comprehensive planning legislation and its concurrency requirement); Edward J. Sullivan, *Oregon Blazes a Trail*, in STATE

monitor and coordinate local plans;<sup>35</sup> and (5) required coordination among local, regional, and state agencies.<sup>36</sup> Some states direct growth to established population centers,<sup>37</sup> which saves infrastructure costs and preserves open space, while other states impose concurrency requirements that bar development until infrastructure needs are met.<sup>38</sup>

A recent American Planning Association report found a trend among a number of states to tighten land use regulatory procedures and to authorize more innovative and flexible land use controls.<sup>39</sup> The adoption of such reform measures should prompt local officials to become more resourceful and responsive in implementing smart growth management techniques. Assuming further state involvement in growth management and comprehensive planning, greater coordination and cooperation among all levels of government will be required. Tensions will invariably arise about the degree of discretion and control that should exist at each level of government and the manner in which growth management systems should be implemented and monitored.<sup>40</sup> Many of these issues can best be addressed by a regional governing entity that facilitates growth management coordination over a sprawling urban area while at the same time devising mechanisms that respond to regional and local conditions. A top-down state approach may fail to address some of each region's particular needs.

Although no appetite for metropolitan governance presently exists in the United States,<sup>41</sup> several regional entities have

PLANNING, *supra* note 31, at 51, 56-79 (describing Oregon's legislative program to require local plans to meet state goals).

35. See NELSON & DUNCAN, *supra* note 3, at 20, 22; DeGrove, *supra* note 34, at 12-14; see also Cobb, *supra* note 32, at 17-18 (emphasizing the need for states to monitor the implementation of plans).

36. See Cobb, *supra* note 32, at 17-18.

37. See NELSON & DUNCAN, *supra* note 3, at 73-93 (describing urban containment principles and techniques in various states). Oregon imposes urban growth boundaries barring municipal water and wastewater services beyond these geographical lines. See *id.* at 22. New Jersey channels state funding for infrastructure improvements to areas where growth is most cost effective. See *id.* at 25.

38. See *id.* at 94-111.

39. See Stuart Meck, *Executive Summary: Status of State Planning Reform*, in A.M. PLAN. ASS'N, *supra* note 32, at 2-3.

40. See NELSON & DUNCAN, *supra* note 3, at 19.

41. See ANTHONY DOWNS, *NEW VISIONS FOR METROPOLITAN AMERICA* 170 (1994).

emerged that exercise planning oversight and enforcement powers. In 1977 the Oregon legislature authorized the creation of the Metropolitan Service District of Metropolitan Portland ("Metro"), which voters subsequently approved.<sup>42</sup> Metro, the nation's first regional entity with a directly elected governing body, coordinates the planning activities of three counties, twenty-seven cities, and many districts with water and wastewater responsibilities.<sup>43</sup> The Twin Cities Metropolitan Council in Minneapolis-St. Paul, governed by a seventeen-member board appointed by the state's governor, reviews projects for consistency with its regional plan and may suspend project action up to one year until conflicts with planning guidelines are resolved.<sup>44</sup> The council possesses authority to issue bonds to finance regional parks, transit systems, and sewer facilities, but it does not provide general local government services.<sup>45</sup>

Clearly a need exists for state and regional structural mechanisms to facilitate greater awareness of how local growth related actions affect an entire metropolitan region.<sup>46</sup> In large urban areas, a form of regional governance provides the best opportunity to implement a comprehensive planning scheme to combat sprawl. While state planning guidelines and strategies should set the state's planning agenda, some room should be left for consideration of regional differences. Once regional policies are established pursuant to state planning policy, a metropolitan government should be given responsibility to monitor their implementation. A state planning agency most likely will not be able to oversee growth management planning effectively in every corner of the state.

Public officials at the local level often possess the most knowledge and show the greatest interest in site-specific sprawl issues. They should assist in smart growth implementation

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42. See 1979 Or. Laws 804; OR. REV. STAT. 197.190(3) (1999); NELSON & DUNCAN, *supra* note 3, at 31; see also DANIEL R. MANDELKER ET AL., STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM: CASES AND MATERIALS 212-14 (4th ed. 1996) (describing the evolution of Metro).

43. See NELSON & DUNCAN, *supra* note 3, at 31.

44. See *id.* at 30.

45. See *id.* at 30-31.

46. See Richard Briffault, *Comment: Three Issues for the City in the 21st Century*, 32 URB. LAW. 409, 413 (2000).

because local input by those closest to the problems can result in greater accountability and wiser decision making. Local governments, however, should be monitored and held accountable by the metropolitan government to ensure compliance with anti-sprawl measures.

## II. A MODEL REGIONAL GOVERNMENT

### *A. Area and Authority*

A model regional government would have authority to govern over all the areas sprawling out from a central city. Ideally, regional governance should embrace the entire metropolitan area of the country's major urban centers. Because today's rural areas may become tomorrow's suburbs, a legal mechanism should be available to incorporate such areas into the regional government when they undergo growth.<sup>47</sup>

The regional government should be empowered to address the full array of forces that generate "unsmart" growth.<sup>48</sup> It should play a vital role in land use policymaking and in the implementation of smart growth strategies. Both air and water pollution stem from land use policies that must be coordinated at a regional level to address the full panoply of sprawl issues. Sprawl should not be treated as only involving air pollution caused by heavy reliance upon automobile travel. Sprawl also adversely affects a region's water supply. Storm water runoff over roads, parking lots, and roofs intensifies and becomes more toxic as more of the natural landscape becomes developed.

### *B. Republican Form of Government*

The regional government should be a representative form of government.<sup>49</sup> During the country's early history such a position would need no further discussion. In the last century, however, the states authorized the creation of many super agencies governed by appointed officials to provide essential services.

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47. See DOWNS, *supra* note 41, at 169.

48. See Jane Holtz Kay, *Dumbing Down 'Smart Growth'*, ATLANTA J. & CONST., Mar. 11, 2001, at D1 (describing the presence of sprawl as "everywhere").

49. The United States Constitution guarantees a republican form of government to the states. See U.S. CONST. art. IV, § 4.

Various arguments have been made in support of the creation of public authorities and special districts. Removed from civil service laws and other regulations generally applicable to local units of government, these public entities can act more quickly and employ the expertise needed to do the job. Usually these bodies provide only one service that enables them to focus thoroughly on the projects they are empowered to undertake.<sup>50</sup> Freed of the more direct political pressures that bear upon elected officials, public authority officials can act in a more business-like fashion to complete their assigned missions.

Today the citizenry is more wary of the power once exercised by such public authority czars as the late Robert Moses who built metropolitan New York City's highway infrastructure with little public input.<sup>51</sup> Nonetheless, Georgia's creation in 1999 of the Georgia Regional Transportation Authority illustrates a preference for state-created super bodies to handle serious metropolitan problems when the existing allocation of power between the state and localities appears unable to solve them. National polls show that voters consider sprawl a top concern today and want the government to address its effects.<sup>52</sup>

Several arguments support the creation of a regional government with elected officials. A representative form of government assures greater accountability to the people. Elected officials, especially those at the regional or local levels of government, can more effectively monitor smart growth implementation than unelected agency heads who often lack feedback from the citizenry or firsthand observation. Voters can remove elected officials who fail to meet their expectations, but possess very limited ability to oust appointed governmental officials.

50. See MANDELKER ET AL., *supra* note 42, at 34 (describing most special districts as "single-function districts" that provide a service that usually falls into one of the following categories: "fire protection, water supply, soil conservation, housing and urban renewal, and drainage").

51. See ROBERT A. CARO, *THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK* 3-21 (1975).

52. See Larry Conley, *Poll Identifies Sprawl as a National Concern*, ATLANTA J. & CONST., Oct. 23, 2000, at B3 (reporting that a survey by Smart Growth America found that seventy-eight percent of Americans favor policies to curb sprawl and "that more than three-quarters of Americans want government to use tax dollars to preserve open space").

Because the causes and effects of sprawl involve individual as well as governmental choices, state agency dictated solutions may fail. While an unelected agency board perhaps can take more expeditious actions to contain sprawl, a need exists for greater public input and acceptance to achieve long-term results. A representative government can better obtain and evaluate its constituents' ideas to improve urban living. Many community groups already realize the shortfalls of suburban living and have mobilized to create civic, green, and recreational space.<sup>53</sup> The interest and enthusiasm that these local groups show in improving their neighborhoods can energize the larger community.<sup>54</sup> Grassroots support taps the local expertise needed to persuade the citizenry to make the types of choices that will diminish the effects of sprawl.

The view that elected officials simply are not up to the task of making unpopular decisions sometimes accounts for the creation of boards with non-elected officials to solve sprawl's problems.<sup>55</sup> Local residents can be expected to oppose projects that will saddle their neighborhoods with additional density.

53. See Larry Conley, *Votes Show Green-for-Green Trend*, ATLANTA J. & CONST., Feb. 19, 2001, at E3 (reporting on the national trend for voter approvals of initiatives to acquire land for protected green and recreational space); Jim Galloway, *Something's Missing in a Land of Plenty: East Cobb Seeks Room To Relax*, ATLANTA J. & CONST., Jan. 14, 2001, at C1 (describing efforts of Friends of East Cobb to raise privately \$1 million to purchase thirteen undeveloped acres for use as public space in a suburban "community without a natural gathering place where anyone can sit, stand, walk—and do anything or nothing"); Stacy Shelton, *Urban Forest Efforts Pay Off*, ATLANTA J. & CONST., Feb. 2, 2001, at C1 (discussing the three-year effort of Wildwood Urban Forest Group to raise funds and gain city support for the purchase of a twenty-six-acre site containing the last large old growth forest in Atlanta); see also Kob, *supra* note 20, at 142-43 (arguing that suburban communities have a tendency to protect narrow self-interests and turn away from regional concerns).

54. For example, Phil Cuthbertson, community activist and Executive Director of the Grant Park Conservancy, successfully lobbied Atlanta's parks department and raised money to move trees to Grant Park from an area being cleared for a fifth Hartsfield Airport runway. See Doug Payne, *Runway Obstacles Are Landing in Grant Park: Trees from Hartsfield Transplanted*, ATLANTA J. & CONST., Feb. 6, 2001, at B6. Cuthbertson came up with the migration idea, which will provide additional leafy canopy in Grant Park as old growth trees die, after reading an article in the *Atlanta Journal and Constitution* about the runway construction. See *id.*

55. Such boards facilitate more centralized control at the state level. See Lucy Soto, *On Panel, It's Not Easy Keeping 'Green,'* ATLANTA J. & CONST., Feb. 12, 2001, at B1 (discussing political maneuvers by state legislative leaders and officials to replace two environmentalists serving on the sixteen-member Georgia Department of Natural Resources board with farmers or agribusiness representatives).



“Not in my back yard” arguments frequently surface at planning and zoning board public hearings. The fact that local interest groups face more difficulty in dominating or capturing the elected officials of a broader based government gives regional control an advantage. When the jurisdiction of a government encompasses a larger geographic area on a regional scale, local groups must compete against other groups to sway votes. Of course, local special interest groups capable of coordinating and combining their followings may be able to carry the day at city hall, but they will find it more difficult to thwart the general public’s interest in a regional setting.<sup>58</sup>

*C. Public Authorities Unable To Address Sprawl  
Comprehensively*

Problems associated with sprawl cannot be resolved by several appointed boards with authority only over a specific function. Public authorities, for the most part, focus on the provision of one or more related services that require infrastructure financing. They have been created to meet the demand for such diverse public improvements as public mass transit facilities, highways, world trade centers, bridges, parks, public housing, public buildings, and irrigation facilities. These independent agencies lack the power and authority to address all the infrastructure needs and issues associated with sprawl and rapid growth. Land use powers have remained in the hands of locally elected officials in the United States, and public authorities traditionally lack the authority to exercise a full array of police powers, provide general governmental services, or levy taxes. Instead, these non-elected boards finance their projects through the issuance of revenue bonds, which frequently escape the constitutional and statutory debt and expenditure limitations that bind many states and local governments. This freedom from local and state financial

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58. Special interest groups can also dominate the state political landscape. See Kathey Pruitt, *Redistricting Awaits Legislature’s Return*, ATLANTA J. & CONST., Mar. 25, 2001, at G8 (describing partisanship activities during the Georgia General Assembly’s 2001 session); Soto, *supra* note 55 (describing actions by agricultural interests to lessen the influence of environmentalists on the Georgia Department of Natural Resources board).

restraints provides a strong incentive to create an authority when additional financial resources become a necessity.

The creation of a metropolitan public authority that possesses a broader range of powers than the typical public authority—multiple powers that enable it to tackle sprawl related problems—may be challenged as violating constitutional and legislative home rule provisions. Several decades ago, the Colorado Supreme Court struck down a statute creating a four-county metropolitan capital improvement district empowered to levy and collect a sales and use tax to finance the construction of capital improvements in the Denver metropolitan area.<sup>57</sup> The court found that superimposing the district's functions upon local governments violated Colorado's constitutional home rule provisions.<sup>58</sup> By supplying local improvements, the district's board of directors exercised powers that duplicated those granted to "local officers directly responsible to the people, and upon whom the duty of discharging such local responsibilities [had] heretofore been placed by constitutional provision or municipal home rule charter provision, or both."<sup>59</sup> Justice Sutton, specially concurring, distinguished the validity of the typical one service district from this "enveloping district" with authority over "any municipal improvement."<sup>60</sup> Thus, should a state create a non-elected metropolitan board with authority to supplant significantly either the provision of local services or the exercise of local regulatory authority, the courts may view such action as contrary to protected home rule powers.

#### *D. Powers*

A regional government should possess the authority to devise a master plan for the entire region. Planning initiatives undertaken in the European cities of Munich, Salzburg, and Vienna resulted in the creation of automobile-free pedestrian zones that increased retail sales and recreational opportunities.<sup>61</sup>

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57. *See Four-County Metro. Capital Improvement Dist. v. Bd. of County Comm'rs*, 369 P.2d 67, 74 (Colo. 1962).

58. *See id.* at 73.

59. *Id.* at 71.

60. *Id.* at 74.

61. *See James A. Kushner, Growth for the Twenty-First Century—Tales from Bavaria*

Vienna's downtown center, populated by both tourists and residents, enjoys nighttime activity and urban vitality due to its large central historic section, a superb transit system, livable space including public squares, and automobile-free pedestrian zones.<sup>62</sup>

To reduce air pollution and traffic congestion, a metropolitan-wide transportation system must be planned and implemented, and land must be allocated for this purpose. A safe, clean, and efficient transit system, accompanied by pedestrian walkways, can increase urban core vitality and make higher density residential areas more desirable and liveable.<sup>63</sup> A regional metropolitan area drawing upon federal funds could emulate the success of some European cities with smart growth planning that will facilitate greater transit usage, less dependence upon the automobile, and the creation of pedestrian friendly areas.<sup>64</sup>

The police powers granted to a metropolitan regional government should include the power to zone and regulate land uses. This responsibility should involve the development of macro zoning codes containing certain basic elements that would be enforced throughout the region. These codes would make it easier to build more compact, mixed use, and pedestrian friendly developments accessible to public transit.<sup>65</sup> Recently more localities have revised their codes to incorporate smart growth techniques by adding provisions that streamline the approval process, offer density bonuses for transit-oriented developments, change road standards to encourage walking and bicycling, and permit mixed uses and diverse housing types.<sup>66</sup>

The ideal regional government would be empowered to address the equitable issues that arise from racial and economic

*and the Vienna Woods: Comparative Images of Planning in Munich, Salzburg, Vienna, and the United States*, 29 URB. LAW. 911, 930 (1997).

62. *See id.* at 930-34.

63. *See id.* at 934-35.

64. *See id.* at 935; *see also* 23 U.S.C. §§ 133, 206 (1994 & Supp. 2000) (authorizing funding for bicycle transportation and pedestrian walkways and activities). Congress authorized funding for modes of transportation to reduce energy consumption and air pollution pursuant to the Intermodal Surface Transportation Efficiency Act of 1991, 102 Pub. L. No. 240, 105 Stat. 1914 (1991), and the Transportation Equity Act for the Twenty-First Century, Pub. L. No. 105-178, 112 Stat. 107 (1998).

65. *See* Oliver A. Pollard, III, *Smart Growth: The Promise, Politics, and Potential Pitfalls of Emerging Growth Management Strategies*, 19 VA. ENVTL. L.J. 247, 262 (2000).

66. *See id.*

segregation. In the absence of regional planning, expanding suburban areas can promote exclusionary planning and zoning.<sup>67</sup> Studies show that a reduction in segregation by economic class and race occurs when a central city possesses the ability to expand and capture much of the suburban growth within its boundaries.<sup>68</sup> A metro government could also encourage business development in underutilized areas.<sup>69</sup> The ability to tap into a broader tax base shores up a city's revenues and provides additional resources that can be allocated for the redevelopment of older, blighted, or vacant areas.

The regional government should have the power to impose impact fees upon developers to assure greater revenue to finance the public infrastructure necessary to service new development. Impact fees simply acknowledge that certain social costs result from new development, including the acquisition and construction costs of public facilities to service the residents and customers who are drawn to it. Although charging such fees results in higher development costs, which most likely will be passed on to the users of the new facilities, these fees reduce the burden existing taxpayers must bear for new infrastructure costs.<sup>70</sup> Impact fees merely shift some of these costs from existing taxpayers to new taxpayers. The imposition of such fees also provides incentives to infill developed areas where sewers, roads, schools, parks, police, fire, and recreational facilities already exist.<sup>71</sup>

The preservation of natural resources should be a prime objective of any regional government. The quality of a region's air, water, and land are interrelated. By exercising control over the entire natural resource spectrum under its jurisdiction, a metropolitan government can better coordinate strategies to address these environmental issues than is possible under a

67. See RUSK, *supra* note 2, at 68. See generally Arthur C. Nelson, *Exclusionary Practices and Urban Sprawl in Metropolitan Atlanta*, 17 GA. ST. U. L. REV. 1087 (2001).

68. See RUSK, *supra* note 2, at 47-48.

69. See THE BROOKINGS INST., CTR. ON URBAN AND METRO. POLICY, *MOVING BEYOND SPRAWL: THE CHALLENGE FOR METROPOLITAN ATLANTA* 28, 38 (2000) (recommending public and private sector strategies to enhance private investment in the slow growing southern parts of the Atlanta region to address the region's uneven growth patterns because most of the development has occurred in the northern part of the region).

70. See FREILICH, *supra* note 18, at 120, 122-24 (describing San Diego's plan to finance public infrastructure costs in new growth areas).

71. See *id.* at 120.

regime of fragmented local and county governments. A metro government cannot preserve its natural resources without land use decision making powers. Land use policies impact an area's ability to control storm water runoff, increase its sewage treatment capacity, and manage its water supplies. In a natural environment heavily dependent upon river basins to supply its water needs, as is true in the Atlanta region, measures must be taken "to prevent rivers from choking up with dirt washing off construction sites and other land-disturbing activities . . . ."<sup>72</sup>

Regional governments should be granted explicit authority to preserve community green space in perpetuity for recreational and other quality of life needs that future generations may demand.<sup>73</sup> The benefits of community open space extend beyond storm water management.<sup>74</sup> Without requirements to retain open space with some of its natural features, new growth will quickly obliterate wildlife habitat, increase storm water runoff, and eliminate possible sites for parks, recreational space, and pedestrian greenways. The essential preservation of urban open areas to create more liveable and environmentally sensitive spaces, as well as alternative transportation corridors, should be viewed as just one more cost of new growth.<sup>75</sup> Smart growth communities should be reminded that the best way to control the future of land is to own it.<sup>76</sup>

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72. Charles Seabrook, *Barnes Tackles Water Issues: Governor Proposes Panel To Make Sure 'Our Well Will Not Run Dry' in Metro Atlanta*, ATLANTA J. & CONST., Feb. 12, 2001, at D4.

73. See Griffith, *supra* note 7, at 581-82 (describing Georgia's program to create more community green space through new funding sources and the establishment of the Georgia Greenspace Trust Fund and local trust funds). Community green space has been defined as green space "close to where people live and work." COMMUNITY GREEN SPACE ADVISORY COMM., GEORGIA'S COMMUNITY GREEN SPACE PROGRAM: A REPORT OF THE COMMUNITY GREEN SPACE ADVISORY COMMITTEE 12 (Dec. 1999), available at <http://www.cviog.uga.edu/Projects/projects.htm> [hereinafter GREEN SPACE REPORT].

74. Community green space protects the viability of "natural systems." GREEN SPACE REPORT, *supra* note 73, at 14. For a description of water quality and other environmental benefits derived from community open space, see *id.* at 15-19.

75. See *id.* at 19-22.

76. See JOEL GARREAU, *EDGE CITY: LIFE ON THE NEW FRONTIER* 306 (1991); Conley, *supra* note 53 (quoting *Governing Magazine* as follows: "Americans seem convinced that the only way to put cherished open space out of reach of developers is to buy it.").

### III. IMPEDIMENTS TO REGIONAL GOVERNANCE IN GEORGIA

#### *A. No Authorization for Regional Governments*

Four levels of government exist in Georgia: the Governor and the General Assembly, cities, counties, and special districts, which include school districts.<sup>77</sup> The Georgia Constitution does not provide for any form of metropolitan or regional government, but it does authorize the consolidation of counties into one county<sup>78</sup> and the consolidation of municipalities with a county or counties in which such municipalities are located.<sup>79</sup> A consolidation of counties requires the approval of a majority of the voters in each of the counties proposed to be consolidated.<sup>80</sup> Likewise, the consolidation of one or more municipalities with a county or counties must be preceded by the separate approval of a majority of the county voters and the voters of each municipality containing at least ten percent of the county's population.<sup>81</sup> The necessity of such approvals makes the creation of a metropolitan government by county or municipal consolidation very difficult to effectuate.

In addition to municipal-county consolidations, pursuant to article IX, section 3, paragraph 2(a) of the Georgia Constitution, another constitutional provision authorizes the General Assembly to provide by general law for the reorganization of county and municipal governments as an alternative to county and municipal consolidations. This provision, article IX, section 3, paragraph 2(b), authorizes the General Assembly to provide:

for the reorganization of county and municipal governments, including, but not limited to, procedures to establish a single governing body as the governing authority of a county and a municipality or municipalities located within such county or for the redistribution of powers between a county and a municipality or municipalities located within the county.<sup>82</sup>

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77. See BROOKINGS INST., *supra* note 69, at 32.

78. See GA. CONST. art. IX, § 1, ¶ 2(c).

79. See *id.* art. IX, § 3, ¶ 2(a).

80. See *id.* art. IX, § 1, ¶ 2(c).

81. See *id.* art. IX, § 3, ¶ 2(a).

82. *Id.* art. IX, § 3, ¶ 2(b).

The General Assembly most likely intended the above provision to cover the reorganization of only one county with a municipality or municipalities within it.<sup>83</sup> The paragraph omits any reference to the word “county” in any plural sense. One could argue, however, that the term “governments” is modified by “county” as well as “municipal,”<sup>84</sup> thereby permitting the consolidation of multiple municipalities and counties. Unlike a municipal and county consolidation, a paragraph 2(b) reorganization does not mandate voter approval; instead, paragraph 2(b) merely permits the General Assembly to require approval of the reorganization “by the qualified voters directly affected” should it decide to do so.<sup>85</sup> The General Assembly, however, chose to make such reorganizations contingent until approved by both a majority of voters within a municipality proposed to be merged with a county and by a majority of voters throughout the county.<sup>86</sup>

It would seem extraordinarily difficult to accomplish the consolidation of a multi-county area into a metropolitan government pursuant to article IX, section 3, paragraph 2(a) of the Georgia Constitution that requires separate approvals by voters of each of the counties and by voters within the municipalities being consolidated that contain at least ten percent of the county’s population. The failure to obtain necessary approvals in one or more jurisdictions would compromise the geographical integrity of a proposed regional government. An amendment to the Georgia Constitution to facilitate the creation of regional governments without such voter approvals, however, would require a statewide vote of approval, which also may be unlikely. The General Assembly has facilitated the cumbersome task of merging municipal governments with counties by providing for the repeal of a municipal charter in order for a county to succeed to the functions and powers of a municipality.<sup>87</sup> That route would also

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83. Chapter 68 of Title 36 of the Georgia Code, which sets forth procedures for governmental reorganization pursuant to the Georgia Constitution, provides only for a municipal government-county merger within one county. See O.C.G.A. §§ 36-68-1 to -3 (2000); see also GA. CONST. art. IX, § 3, ¶ 2(a).

84. See GA. CONST. art. IX, § 3, ¶ 2(b).

85. *Id.*

86. See O.C.G.A. § 36-68-3(a)(3)-(4) (2000).

87. See *id.* §§ 36-68-1 to -3.

seem to be an option in the creation of a metropolitan-wide government.

Three city-county consolidations have been successfully completed in Georgia. Local and special acts authorized the creation of the consolidated city-county governments of Athens-Clarke County, Columbus-Muscogee County, and Augusta-Richmond County.<sup>88</sup> A constitutional amendment that provides greater clarification as to the legal status of consolidated city-county governments could prove beneficial. Article IX of the Georgia Constitution recognizes two types of local governments: municipal corporations and counties. Georgia's combined city-county governments do not fit completely into either category, and questions have been raised as to the applicability of particular general statutes to these forms of government.<sup>89</sup>

The creation of a regional government solely through the consolidation of counties pursuant to article IX, section 1, paragraph 2(c) of the Georgia Constitution poses another option, although approval of such a consolidation by a majority of the voters in each county may be very difficult to achieve.<sup>90</sup> Counties in the United States provide state related services at the local level, but their services have been expanded in recent decades to provide urban services, particularly in metropolitan areas.<sup>91</sup> Although counties traditionally provided services only in their unincorporated areas, today it is common for their functions to be performed throughout their territorial reach.<sup>92</sup>

In Georgia, counties possess the broad powers granted to both counties and municipalities pursuant to article IX, section 2, paragraph 3 of the Georgia Constitution, known as Amendment 19.<sup>93</sup> This provision, by conferring upon counties the same

88. See MARY A. HEPBURN, CARL VINSON INST. OF GOV'T, THE UNIV. OF GA., *LOCAL GOVERNMENT IN GEORGIA* 203-05 (2d ed. 1991). The consolidation of the city of Augusta and Richmond County was authorized by the General Assembly in 1995. See 1995 Ga. Laws 3648.

89. See *Athens-Clarke County v. Walton Elec. Membership Corp.*, 454 S.E.2d 510, 512 (Ga. 1995) (finding that Athens-Clarke County's new hybrid form of government met the definition of an "active municipality"); *Troup County Elec. Membership Corp. v. Ga. Power Co.*, 191 S.E.2d 33, 37 (Ga. 1972) (finding that Columbus-Muscogee County is a new form of city-county government that possesses the attributes of a county).

90. See GA. CONST. art IX, § 1, ¶ 2(c).

91. See MANDELKER ET AL., *supra* note 42, at 32.

92. See *id.*

93. This paragraph of the Georgia Constitution was ratified in 1886. See Melvin B.



powers that municipalities exercise, in effect “municipalized” county government so that counties now perform the same type of urban services that cities undertake.<sup>94</sup> Thus, the consolidation of counties in Georgia could theoretically result in a metropolitan government with regional powers. Certainly, such a consolidated county government could perform a number of functions in a region. Left unanswered would be the effect of such a consolidation upon incorporated municipalities within the consolidated counties. The General Assembly has authorized the repeal of municipal charters to accomplish the merger of municipalities with a county.<sup>95</sup> Such a reorganization requires, however, the approval of a majority of voters in the affected municipalities.<sup>96</sup>

### *B. Reluctance To Devolve Power to Regional Governments*

Historically strong alliances have been built around county governance.<sup>97</sup> Because Georgia’s 159 counties are relatively small units in comparison with counties in other states, state leaders have discussed the benefits of consolidating some of them for over a half century.<sup>98</sup> But opposition to county consolidation remains strong, in part due to historical identification with county names and courthouses and the patronage opportunities provided by maintaining 159 separate county governments.<sup>99</sup> County commissioners wield considerable influence in such organizations as the Atlanta Regional Commission.<sup>100</sup> Attempts to erode their influence would be met with resistance. Nonetheless, this county domination can facilitate attempts to solve regional sprawl and

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Hill, Jr., *Home Rule in Georgia: A Study in Legislative and Political Schizophrenia*, GA. COUNTY GOV’T 20 (Jan. 1995).

94. See *id.* at 21.

95. See O.C.G.A. §§ 36-68-1 to -3 (2000).

96. See *id.* § 36-68-3(3).

97. See BROOKINGS INST., *supra* note 69, at 33.

98. See HEPBURN, *supra* note 88, at 201.

99. See *id.* at 203.

100. The Atlanta Regional Commission is the federally designated metropolitan planning organization (MPO) for Atlanta’s ten-county metropolitan area. See Atlanta Reg’l Comm’n, Home Page, at [www.atlantaregional.com](http://www.atlantaregional.com) (last visited June 10, 2001). The chairman of the board of commissioners of each county within ARC’s ten-county region is a member of ARC. See O.C.G.A. § 50-8-84(a)(1) (1998).

transportation problems.<sup>101</sup> In the Atlanta metropolitan area, targeted economic and housing investment in the southern portions of demographically diverse Fulton and DeKalb counties, for example, could take some of the pressure off the rapidly growing northern counties.<sup>102</sup> Such investment could result in the movement of people closer to mass transit infrastructures and the downtown and airport employment centers.<sup>103</sup>

Racial politics further impede the formation of a regional government in the Atlanta metropolitan area. A regional government would require a sharing of power between the diverse ethnic constituencies in the central city area and the mostly white residents in the surrounding northern and outer suburban areas. Assuming preclearance for a regional government could be received from the Department of Justice,<sup>104</sup> the willingness to cede power to such a regional governmental entity does not exist today.

In Georgia, the state itself is more likely to take responsibility for the coordination and centralization of governmental functions needed to cope with sprawl. Throughout Georgia's history, the General Assembly has wielded considerable power over localities.<sup>105</sup> Home rule powers did not exist until the latter half of the twentieth century.<sup>106</sup> Historically, local officials went to the General Assembly for the adoption of local acts that established charters and allocated local government powers.<sup>107</sup>

The Georgia Constitution also grants the state generic powers to legislate on local issues. The constitution empowers the General Assembly "to make all laws not inconsistent with [the]

101. See BROOKINGS INST., *supra* note 69, at 33.

102. See *id.*

103. See *id.* at 38.

104. The Voting Rights Act of 1965 requires Georgia and its political subdivisions to obtain preclearance from the United States Attorney General or the United States District Court for the District of Columbia for any change in a "standard, practice, or procedure with respect to voting." 42 U.S.C. § 1973c (1994).

105. See R. Perry Sentell, Jr., *The Georgia Home Rule System*, 50 MERCER L. REV. 99, 105 (1998).

106. See Frank S. Alexander, *Inherent Tensions Between Home Rule and Regional Planning*, 35 WAKE FOREST L. REV. 539, 545 (2000). "Until the latter half of the twentieth century, with the exception of . . . certain zoning powers, local governments in Georgia had to return to the General Assembly virtually every time the local unit sought to change a salary, a job description, or undertake a new public service." *Id.*

107. See *id.* at 545; Hill, *supra* note 93, at 17.

Constitution . . . which it shall deem necessary and proper for the welfare of the state”<sup>108</sup> and to enact local legislation.<sup>109</sup> This power could be exercised to facilitate greater regional cooperation and coordination.

The failure of local governments to cooperate effectively in such regional organizations as the Atlanta Regional Commission (“ARC”) may further explain the political resistance to devolve more power to local governments to combat urban sprawl. Empowered to plan for the ten-county Atlanta metropolitan area, ARC, the regional planning agency, was unable to enforce or implement its regional scale plans.<sup>110</sup> When ARC and other state agencies failed to devise a plan to meet federal air quality standards, the state acknowledged its dependence upon federal highway funds and changed its structure for handling transportation issues despite resistance from powerful local constituencies. It created the Georgia Regional Transportation Authority (“GRTA”) to operate in geographic areas designated as non-attainment areas under the Clean Air Act and granted it the power to approve or disapprove ARC’s regional transportation plans.<sup>111</sup>

### *C. State and Local Overlapping Controls*

Even as new state governmental structures emerge to cope with problems created by the Atlanta area’s phenomenal growth, Georgia’s local governments will continue to play an essential role in devising solutions to cope with sprawl. Smart growth cannot occur without paying attention to the

108. See GA. CONST. art. III, § 6, ¶ 1.

109. See *id.* art. III, § 5, ¶¶ 8-9; *id.* art. III, § 6, ¶ 4(a).

110. See Lucy Soto, *A Vision and a Plan Needed, New GRTA Members Believe*, ATLANTA J. & CONST., June 14, 1999, at E4 (stating that parochialism and political turf wars have prevented ARC from implementing its regional plans); Editorial, *State Water Control, A Refreshing Idea*, ATLANTA J. & CONST., Sept. 19, 2000, at A8 (stating that “the structure of the ARC . . . was unable to deal effectively with metro Atlanta’s air pollution and transportation problems”).

111. See 1999 Ga. Laws 112; O.C.G.A. § 50-32-3(a) (Supp. 2001) (creating GRTA); *id.* § 50-32-11(a) (granting GRTA the power to approve or disapprove ARC’s transportation plans). See generally *Review of Selected 1999 Georgia Legislation*, 16 GA. ST. U. L. REV. 233 (1999) [hereinafter *Selected 1999 Legislation*] (providing the legislative history of the bill creating the Georgia Regional Transportation Authority). “GRTA is pronounced ‘Gretta.’” *Id.* at 233 n.1; see also *infra* notes 132-38 and accompanying text (discussing GRTA’s powers).

inevitability of home rule, both in Georgia and in the rest of the country.<sup>112</sup> In Georgia, state constitutional provisions that vest planning and zoning powers in cities and counties make them essential players in the smart growth movement.<sup>113</sup>

Despite local control over zoning, the General Assembly possesses the power to enact laws that regulate land uses to protect natural resources, the environment, and the vital areas of the state. The state's constitution grants the General Assembly the power to provide by law for "[r]estrictions upon land use in order to protect and preserve the natural resources, environment, and vital areas of this state."<sup>114</sup> Certainly, the natural resources of the state include land, water, and air. Likewise, the "environment" encompasses the protection of these resources, which are regulated under federal and state statutes. "Vital areas" include areas of regional or statewide importance, which must be preserved to protect the public interest.<sup>115</sup> Thus, the state may, by law, enact statutes that restrict land uses that adversely affect areas such as wetlands and river banks.<sup>116</sup> Because localities possess the more specific power to zone, however, any state control over land uses must be exercised in some form of overlay requirements that leaves local zoning powers intact.<sup>117</sup> This concurrent jurisdiction leaves the allocation of land use powers between the state and localities somewhat fragmented.<sup>118</sup>

112. See Alexander, *supra* note 108, at 540.

113. The Georgia Constitution provides that "[t]he governing authority of each county and of each municipality may adopt plans and may exercise the power of zoning. This authorization shall not prohibit the General Assembly from enacting general laws establishing procedures for the exercise of such power." GA. CONST. art. IX, § 2, ¶ 4.

114. *Id.* art. III, § 6, ¶ 2(a)(1).

115. See Pope v. City of Atlanta, 249 S.E.2d 16, 18-19 (Ga. 1978) (quoting the "vital areas" language of the Georgia Constitution to support the state's land use restrictions upon the construction of impervious structures near the Chattahoochee River); Linda K. DiSantis, *Constitutional Barriers to Statewide Land Use Regulation in Georgia: Do They Still Exist?*, 3 GA. ST. U. L. REV. 249, 266 (1987).

116. See Pope v. City of Atlanta, 240 S.E.2d 241, 244 (Ga. 1977) (finding that a Georgia statute restricting development along stream corridors fell within the state's reserved powers and did not violate state constitutional provisions that delegated zoning powers to local governments); DiSantis, *supra* note 115, at 265-66.

117. Counties and cities also exercise broad home rule powers over their "property, affairs and local government . . ." GA. CONST. art. IX, § 2, ¶ 1(a); O.C.G.A. § 30-35-3(a) (2000).

118. See Alexander, *supra* note 108, at 551-52.

The state's regulatory land use tool box includes another significant power. The 1983 Georgia Constitution's revision of state and local powers added a paragraph that grants the General Assembly the power to provide by law for zoning should the exercise of this power be necessary to effect participation and compliance with federal programs.<sup>119</sup> The General Assembly now possesses a constitutional power to provide by law for state and local participation in "federal programs and the compliance with laws relating thereto, including . . . the powers . . . to effect such participation and compliance, . . . and to zone property."<sup>120</sup> While the provision's grammatical awkwardness cannot be denied, Professor Alexander, in a recent publication, persuasively concluded that the provision grants the General Assembly the power to zone when the exercise of this power is necessary to comply with or participate in federal programs.<sup>121</sup>

#### IV. GEORGIA GOVERNMENTAL ENTITIES RECENTLY CREATED TO COMBAT SPRAWL

Georgia's General Assembly has created new governmental entities to deal with the effects of sprawl in the last three legislative sessions. Its approach has been to create a state agency to address one aspect of sprawl's harms and costs. First, the Georgia Regional Transportation Authority was created in 1999 to manage land transportation and air quality—issues related to the area's congested highways that cause air pollution and slow the movement of goods and people.<sup>122</sup> Next, in 2000 the

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119. See GA. CONST. art. III, § 6, ¶ 2(a)(3); see also Alexander, *supra* note 106, at 552 (concluding that this constitutional provision grants the General Assembly the power "to zone property (at least in the context of participation in federal programs)").

120. GA. CONST. art. III, § 6, ¶ 2(a)(3). The provision grants the General Assembly the power to provide by law for:

The participation by the state and political subdivisions and instrumentalities of the state in federal programs and the compliance with laws relating thereto, including but not limited to the powers, which may be exercised to the extent and in the manner necessary to effect such participation and compliance, to tax, to expend public money, to condemn property, and to zone property.

*Id.*

121. See Alexander, *supra* note 106, at 552.

122. 1999 Ga. Laws 112 (codified at O.C.G.A. §§ 50-32-1 to -70 (Supp. 2001)). For a detailed discussion of the legislative history of the bill creating the Georgia Regional Transportation Authority, see *Selected 1999 Legislation*, *supra* note 111.

General Assembly created the Georgia Greenspace Commission to encourage localities to preserve more open space by offering them financial incentives to do so.<sup>123</sup> In the 2001 session, the General Assembly tackled water quality and supply issues through the creation of the Metropolitan North Georgia Water Planning District.<sup>124</sup> As the first decade of the new millennium evolves, each model will be evaluated for the success it has achieved in improving the quality of life of Georgia's residents. One of these entities could become either an ideal state model for the solution of growth related problems or a spring board from which a regional government might emerge.

### *A. Georgia Regional Transportation Authority*

The Atlanta region's non-compliance with federal air quality standards and the attendant fear of frozen federal highway funds for an indefinite period of time provided the main impetus for the creation of GRTA.<sup>125</sup> Convinced that the state's prosperity could not be sustained without greater attention to the environmental harms that accompany sprawl's pattern of development, Governor Roy Barnes persuaded the General Assembly to vest GRTA with region-wide powers over the thirteen-county Atlanta non-attainment area.<sup>126</sup> At the time of GRTA's creation, a regional body, the Atlanta Regional Commission, already possessed the authority to plan for the metro region's future growth.<sup>127</sup> The locally elected officials that served on ARC's board were viewed, however, as an impediment to the implementation of ARC's plans because they could not escape the dominant influence of their local constituencies who

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123. 2000 Ga. Laws 392 (codified at O.C.G.A. §§ 36-22-1 to -12 (2000)). For a detailed discussion of the legislative history of the bill creating the Georgia Greenspace Commission, see *Review of Selected 2000 Georgia Legislation*, 17 GA. ST. U. L. REV. 239 (2000) [hereinafter *Selected 2000 Legislation*].

124. See 2001 Ga. Laws 286 (codified at O.C.G.A. §§ 12-5-570 to -586 (2001)).

125. See Alexander, *supra* note 108, at 555.

126. GRTA's authority extends, as well, to other areas of the state that fail to meet federal Clean Air Act requirements. See O.C.G.A. § 50-32-10(a)(2)(B) (Supp. 2001).

127. The Atlanta Regional Commission is the metropolitan area planning and development commission for the Atlanta metropolitan area. See Atlanta Reg'l Comm'n, *supra* note 100; see also O.C.G.A. §§ 50-8-80 to -103 (1998) (providing for metropolitan area planning and development commissions); *id.* §§ 50-8-97 to -98 (specifying planning powers).

lacked a regional outlook.<sup>128</sup> GRTA's framers decided to make GRTA's fifteen-member board a non-elected one and granted the governor the power to appoint all of its members.<sup>129</sup> In 2001, two years after GRTA's creation, a consensus exists that "ARC makes plans and GRTA provides the hammer to implement those plans,"<sup>130</sup> but agreement remains to be reached on how the two agencies should work together.<sup>131</sup>

GRTA's stated purpose is "managing or causing to be managed land transportation and air quality" systems in the geographical areas under its jurisdiction.<sup>132</sup> This broad authority covers such functions as designing, constructing, improving, and equipping these systems. GRTA may contract with both public and private entities for this purpose.<sup>133</sup> It assists and coordinates with all state, regional, and local authorities charged with planning responsibilities for air quality and land transportation; it reviews all transportation plans prepared by metropolitan planning agencies and Georgia's Department of Transportation.<sup>134</sup>

GRTA's powers may be characterized as those of the carrot and stick variety.<sup>135</sup> Its approval power over transportation planning enables it to negotiate with state and regional planning agencies to require any revisions deemed necessary to attain its own standards for air quality. GRTA may approve or disapprove all developments with a regional impact within its jurisdiction.<sup>136</sup> Further, it controls all points of highway and road

128. See David Goldberg, *GRTA Board Members To Hit Ground Running: Swearing-In Meeting Today*, ATLANTA J. & CONST., June 9, 1999, at C5 (quoting Governor Roy Barnes as stating that "ARC was not effective . . . [because] [i]t is . . . dominated by (local) elected officials and did not have the power to implement" solutions to the pollution and transportation problems caused by sprawl); Kelly Simmons, *ARC Challenge: New Leaders Must 'Prove' Regional*, ATLANTA J. & CONST., Jan. 24, 2000, at B1 (discussing the need for ARC members to take a regional approach that avoids sectionalism).

129. See O.C.G.A. § 50-32-4(a) (Supp. 2001).

130. John McCosh, *Inside Line: Your Weekly Intelligence Report on Business Development; Identity Crisis at ARC*, ATLANTA J. & CONST., Feb. 19, 2001, at E1 (discussing ARC's fears that GRTA will undermine ARC's planning functions).

131. See *id.*

132. O.C.G.A. § 50-32-3(a) (Supp. 2001).

133. See *id.* § 50-32-11(a)(4), (26).

134. See *id.* § 50-32-11(a)(26)-(30).

135. See James L. Bross, *Smart Growth in Georgia: Micro-Smart and Macro-Stupid*, 35 WAKE FOREST L. REV. 609, 616, 618 (2000).

136. See O.C.G.A. § 50-32-14 (Supp. 2001).

access through its power to deny road access permits.<sup>137</sup> Should a local government fail to comply with GRTA plans, GRTA is empowered to cut off federal and state funds earmarked for it.<sup>138</sup> These powers carry considerable weight, but they should not mask the reality that GRTA's direct powers extend only to transportation policy as it affects air quality.

GRTA's impact on land use policy, an essential component of all anti-sprawl measures, can be exercised only through incentives and threats followed by coercive action if the local entity fails to meet GRTA directives. Because Georgia's constitution denies any state body the power to directly plan and zone property, GRTA was cleverly devised to exercise powers within this home rule context. Without direct land use powers, GRTA must calculate how far it can go in mandating smart growth techniques through its power to deny approvals and withhold funds. Local governments have been quick to criticize GRTA's powers as too extensive.<sup>139</sup>

Two years after its creation, GRTA's influence remains unclear. The creation of a bus system for Clayton County stands as GRTA's primary accomplishment during this initial phase of operation.<sup>140</sup> GRTA has avoided showdowns with local governments or the Georgia Department of Transportation.<sup>141</sup> But clearly GRTA, even with its appointed board, cannot escape political realities or media-created expectations that GRTA will

137. See *id.* § 50-32-11(a)(33).

138. See *id.* § 50-32-11(a)(32), (37), (38); *id.* § 50-32-14.

139. See Kelly Simmons, *GRTA OKs Rein on Local Funding; Policy Blocking Money for Counties, Cities That Add to Smog, Sprawl Criticized*, ATLANTA J. & CONST., Sept. 14, 2000, at E1 (discussing fears of city and county officials that GRTA will control land uses through its power to review developments of regional impact and its power to withhold local funding); Kelly Simmons, *Low-Density Uses Not Always Bad, State Agency Says*, ATLANTA J. & CONST., Dec. 4, 2000, at E7 (discussing local government leaders' view that GRTA should not control or direct local land uses).

140. See Ledford, *supra* note 21. A commentator stated in March 2001 that the "Georgia Regional Transportation Authority, or GRTA, is [two] years old and is known only as the agency that provides bus service in Clayton County. It is also known as the agency that studies studies." Dick Williams, *Ideas for Easing Perimeter Jam Await Green Light from GRTA*, ATLANTA BUS. CHRON., Mar. 23-29, 2001, at 48A.

141. GRTA has emphasized a cooperative attitude toward local governments and the ARC. See Simmons, *GRTA OKs Rein on Local Funding*, *supra* note 139 (discussing GRTA members' views that GRTA should work with local communities rather than dictate to them its preferred development policies); Kelly Simmons, *GRTA Respects Local Agencies' Independence*, ATLANTA J. & CONST., Dec. 6, 1999, at B3 (discussing the policy of GRTA's board members to maintain close contacts with local governments).



soon solve Atlanta's traffic woes. The fact that it must negotiate with a large number of counties and municipalities with differing interests makes the exercise of power difficult.<sup>142</sup>

At some point GRTA may find it necessary to exercise one of its coercive powers, thereby supplanting home rule. Some people believe that such a definitive exercise of power would force the local government to comply with GRTA policies and deter other governments from contesting GRTA's authority. But it is entirely possible that public officials would rush to defend the defiant entity. Local officials could thwart GRTA initiatives by engaging in public relations appeals that diminish its credibility. Local entities might seek out sympathetic state legislators, for example, to lobby for their interests when they are deemed to clash with a GRTA regional vision. Further, GRTA's large board may make it difficult for members to reach consensus on a variety of issues. The members of GRTA's first board represented a number of different constituencies whose interests may be at odds with each other.<sup>143</sup>

GRTA clearly has been empowered to exercise land transportation powers and address air quality issues on a regional basis. Through its power over federal transportation funding, it can require local governments to implement policies that affect the manner in which they exercise their land use powers. Local entities can be expected, however, to challenge GRTA action that affects the exercise of their land use powers. How GRTA responds to such challenges will determine how effective a role it can play in implementing regional policies that may adversely affect local interests.

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142. See John McCosh, *GRTA Plan Oversteps, Some Say*, ATLANTA J. & CONST., May 3, 2000, at B1 (discussing potential political opposition should GRTA link transportation funding to counties' acceptance of mass transit and high density development).

143. A variety of backgrounds and geographical locations are represented on GRTA's board of directors. See GRTA, Board Profiles, at [http://www.grta.org/board\\_profiles.html](http://www.grta.org/board_profiles.html) (last visited June 10, 2001). GRTA's board includes environmentalists, grassroots community leaders, people with direct experience in land use and transportation planning, lawyers, and people with experience in a number of different businesses. See *id.* Several members have been active in Chamber of Commerce projects. See *id.*

*B. Georgia Greenspace Commission*

Smart growth techniques call for the preservation of open space to offset higher density living.<sup>144</sup> In 2000 the General Assembly created the Georgia Greenspace Commission ("Commission") and established a state Greenspace Trust Fund to encourage Georgia's counties to preserve a greater percentage of their land for community green space.<sup>145</sup> The Atlanta region's record for dedicated park and recreational space falls considerably below that of other major U.S. metropolitan areas.<sup>146</sup> The General Assembly did not make green space state funding contingent upon reaching a certain quota of preserved community green space, but the legislation does require each eligible applicant to establish a green space program that projects how twenty percent of its geographic area can be turned into permanently protected green space.<sup>147</sup>

Georgia's green space law provides local incentives rather than mandates to increase the amount of undeveloped land kept in a natural state and to encourage the use of land for natural resource protection and recreation.<sup>148</sup> Eligibility for funding from the Georgia Greenspace Trust Fund is made contingent upon approval of a green space program that (1) identifies barriers to the twenty percent green space preservation goal, (2) proposes a ten-year strategy to overcome such barriers, and (3) makes commitments to employ land use ordinances, policies, and regulations that will further the achievement of green space

144. See Buzbee, *supra* note 20, at 378-90 (presenting a rationale for the preservation of metropolitan area green spaces).

145. See 2000 Ga. Laws 392; O.C.G.A. § 36-22-3(a) (2000) (creating the Commission); *id.* § 36-22-4 (creating the Georgia Greenspace Trust Fund). For a discussion of the Georgia green space legislation, see Griffith, *supra* note 7, at 576-82, and *Selected 2000 Legislation*, *supra* note 123.

146. The Trust for Public Land and the Urban Land Institute ranked Atlanta last among twenty-five major U.S. cities in the percentage of land set aside for park purposes. See John McCosh, *Atlanta Ranks Low in Land for Parks*, ATLANTA J. & CONST., Aug. 11, 2000, at D1. Atlanta has preserved 3.7% of its land as park space, whereas New York City has set aside 26.8% of its land for this purpose. See *id.*

147. See O.C.G.A. § 36-22-6(1) (2000).

148. "Greenspace" is defined to include undeveloped land in a natural state or land developed or restored to the extent that it is consistent with meeting goals related to: water quality protection, flood protection, wetlands protection, erosion reduction, riparian buffers protection, scenic protection, archaeological protection, recreational uses (boating, hiking, camping, fishing, hunting, running, jogging, biking, and walking), and the connection of green areas. See *id.* § 36-22-2(3).

preservation.<sup>149</sup> The green space law's carrot approach attempts to influence local land use and zoning practices by offering monetary incentives to encourage green space preservation.

The green space law works within the state's existing governmental structure by making counties throughout the state eligible for green space funding based on population and population growth.<sup>150</sup> Because the law targets counties for green space funding, it lacks a regional focus. No specific mechanisms call for the coordination of green space programs among the state's numerous counties<sup>151</sup> or create connected greenways across county lines.<sup>152</sup> Most of the \$30 million appropriated for the program's first year of operation, however, was allocated to fund green space initiatives in the metro Atlanta area.<sup>153</sup>

To accomplish green space preservation, the state created another state governmental body, the Georgia Greenspace Commission. Like the GRTA board, non-elected officials serve on the five-member Commission. Three Commission members receive their appointments directly from the governor; the remaining two members are state agency heads—the Commissioner of the Department of Natural Resources and the Director of the State Forestry Commission.<sup>154</sup> Unlike GRTA, the state directly, through the Georgia Department of Natural Resources, administers the program. This department provides staff support to the Commission and administers the Greenspace Trust Fund.<sup>155</sup>

149. See *id.* § 36-22-6(2).

150. See *id.* § 36-22-10. To be eligible a county must have a population of 60,000 and have experienced an average population growth of 800 persons per year. See *id.* § 36-22-10(1)(2).

151. Georgia has 159 counties. See GA. CONST. art. IX, § 1, ¶ 2(a) (prohibiting more than 159 counties in Georgia).

152. At the time the green space legislation was proposed, GRTA chairman Joel Cowan stated that the key to green space preservation "is finding ways to buy and connect land for green belts." Kathey Pruitt, *Greenery Set-Aside in Plans*, ATLANTA J. & CONST., Aug. 11, 1999, at A11.

153. See Conley, *supra* note 53.

154. See O.C.G.A. § 36-22-3(a) (2000).

155. See *id.* §§ 36-22-3(c), -4(a). Only \$30 million was appropriated for green space funding during the first year of the law's operation. See Kathey Pruitt, *Green Space Plan Official Today*, ATLANTA J. & CONST., Apr. 16, 2000, at D3.

*C. Metropolitan North Georgia Water Planning District*

Atlanta's dramatic growth in the last twenty-five years has strained its limited water resources.<sup>153</sup> Storm water runoff, a major cause of water pollution in the Atlanta metro region, increases as developers bulldoze away natural ground cover to make way for new development.<sup>157</sup> Future demands for growth cannot be met without increased wastewater discharges that will necessitate increasing wastewater treatment capacity.<sup>153</sup> Recognizing that the state's economic prosperity could not be sustained without addressing metro Atlanta's impending water quality and water supply crisis, regional business leaders formed the thirty-eight-member Clean Water Initiative Task Force to study regional water quality issues.<sup>159</sup>

The Clean Water Initiative Task Force recommended the creation of a water planning district comprised of local officials and citizen representatives to undertake watershed regional planning for storm water, wastewater, and water supply management.<sup>160</sup> It emphasized that this public body should only be a planning district leaving water related regulatory powers vested primarily in the state's Environmental Protection Division ("EPD").<sup>161</sup> Agreeing with many of the Task Force's recommendations, Governor Roy Barnes introduced legislation to create an eighteen-county water planning district.<sup>162</sup>

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156. Atlanta relies almost exclusively upon one river, the Chattahoochee, for its water supply. See CLEAN WATER INITIATIVE, *supra* note 25, at 2. The Chattahoochee River Basin constitutes one of the smallest river basins serving a major metropolitan region in the United States. See *id.*

157. See *id.* at 4.

158. See *id.* at 8.

159. See *id.* at 1; Editorial, *Water Requires Statewide Initiative*, ATLANTA J. & CONST., Dec. 1, 2000, at A28.

160. See CLEAN WATER INITIATIVE, *supra* note 25, at 14.

161. See *id.*

162. See Charles Seabrook, *Governor Seeks Area Water Plan; Regional Agency for 18 Metro Counties*, ATLANTA J. & CONST., Feb. 6, 2001, at A1. Not accepting all of the Task Force's suggestions, Governor Barnes reduced the size of the suggested thirty-five-member governing board to twenty-five members. See *id.* The Governor proposed that the board be comprised of five mayors and ten county officials to be chosen by the Atlanta Regional Commission (ARC) and ten other appointed members—six to be chosen by the governor and two each to be selected by the lieutenant governor and the speaker of the House of Representatives. See *id.* The Governor rejected the Task Force's recommendation that sixteen appointed citizen representatives serve on the District's governing board. See *id.*; CLEAN WATER INITIATIVE, *supra* note 25, at 14. The legislation

Growing community concerns that the region's limited water supply would choke off future growth and a federal court order imposing deadlines for the adoption of water management plans resulted in the enactment of the Metropolitan North Georgia Water Planning District Act ("Act").<sup>163</sup> The Act created the Metropolitan North Georgia Water Planning District ("District")<sup>164</sup> for the primary purpose of developing "regional and watershed-specific plans for storm-water management, waste-water treatment, water supply, water conservation, and the general protection of water quality . . . ."<sup>165</sup> The Act obligates all governmental units within the District's area to implement District plans once developed.<sup>166</sup>

The Act mandates that the District formulate regional water policy that takes into consideration the impact of its policies upon downstream areas.<sup>167</sup> This acknowledgment, considered one of the Act's most important features,<sup>168</sup> thrusts the District into the role of promoting intergovernmental coordination and cooperation for all water issues within the eighteen-county area.<sup>169</sup> The Act specifically calls for the "[d]evelopment of regionally consistent policies, model ordinances, and minimum standards of performance for local governments relating to the creation and implementation of the plans developed by the

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as enacted eliminated any participation by the ARC in the selection of board members and provided for representation on the board from every affected county. See O.C.G.A. § 12-5-575(a)(1)(3) (Supp. 2001); Janet Frankston, *County Wants Equality on District Water Board*, ATLANTA J. & CONST., Feb. 22, 2001, at JQ9.

163. See 2001 Ga. Laws 286 (codified at O.C.G.A. §§ 12-5-570 to -586 (2001)). The Atlanta regional community faced the challenge that the area's rivers did not meet quality standards and were reaching their limits in accepting more wastewater discharges. See Editorial, *State Must Dive, Not Dip, Into Serious Water Policy*, ATLANTA J. & CONST., Feb. 7, 2001, at A12; Kathy Pruitt, *Citing 'Critical' Needs, Governor Signs Water Pact*, ATLANTA J. & CONST., Apr. 6, 2001, at C3; Charles Seabrook, *Water Issues at High Tide in Legislature*, ATLANTA J. & CONST., Jan. 2, 2001, at B1.

164. See 2001 Ga. Laws 286; O.C.G.A. § 12-5-572(a) (2001).

165. O.C.G.A. § 12-5-572(c) (2001). The Act states that the "general purpose of the district shall be to establish policy, create plans, and promote intergovernmental coordination for all water issues in the district; to facilitate multijurisdictional water related projects; and to enhance access to funding for water related projects among local governments in the district area." *Id.* § 12-5-572(b).

166. See *id.* § 12-5-572(c).

167. See *id.* § 12-5-571(a).

168. See Editorial, *House Vote Solidifies Equitable Water Planning*, ATLANTA J. & CONST., Mar. 20, 2001, at A16.

169. See O.C.G.A. § 12-5-572(b) (2001).

[District].<sup>170</sup> The Act contemplates the adoption of (1) model ordinances for storm water management, (2) a District-wide watershed management plan, (3) a District wastewater management plan, and (4) a water supply and water conservation management plan.<sup>171</sup> The Act empowers the state's EPD to enforce compliance with District plans through its permitting authority and provides monetary incentives to local governments that implement the District's model ordinances and plans.<sup>172</sup>

At the opening of the General Assembly's 2001 session, speculation existed that legislators from areas outside the Atlanta region would oppose a regional water planning proposal for metro Atlanta because they would not want any of their constituents' tax dollars used to help clean Atlanta's water.<sup>173</sup> Although the Act provides for the funding of the District's operations,<sup>174</sup> it does not provide any specific state funding sources for the infrastructure costs that inevitably must be incurred to implement future District plans.<sup>175</sup> The Act calls for the creation of a board finance committee to meet with the Georgia Environmental Facilities Authority, the Department of Community Affairs, and the Department of Natural Resources to develop recommendations to establish a funding structure for the District.<sup>176</sup> Any adopted or amended recommendations must

170. *Id.* § 12-5-574(a)(4).

171. *See id.* §§ 12-5-582 to -584.

172. *See id.* §§ 12-5-582(e), -583(e), -584(d)-(e). "Individual counties and cities within the district would have to adhere to the plan or risk being cut off from state grants for water-related projects and turned down for permits to discharge wastewater or withdraw more water from rivers and streams." Seabrook, *supra* note 162.

173. *See* Seabrook, *supra* note 163.

174. *See* O.C.G.A. § 12-5-577(b) (2001). Funding comes from dues paid by cities and counties within the District and state appropriated moneys. *See id.* The annual operations budget of the District is estimated to be \$8 million, with \$1 million to come from the state and \$5 million to come from cities and counties. *See* Charles Seabrook, *What Happens Next?: Two Bills Have Been Passed, But Now Comes the Hard Part of Managing Growth: Water Planning District: 2001 Georgia Legislature*, ATLANTA J. & CONST., Mar. 26, 2001, at E1. Initially, the Atlanta Regional Commission will provide the staff and administrative support necessary to operate the District. *See id.*; *see also* O.C.G.A. § 12-5-579(a) (2001).

175. The Final Report of the Clean Water Initiative called for creating a \$2 billion Clean Water Loan/Bond fund to provide low interest loans to local governments for projects consistent with the regional water plan. *See* CLEAN WATER INITIATIVE, *supra* note 25, at 17.

176. *See* O.C.G.A. § 12-5-580(b) (2001).

be forwarded by the board to the governor and other state officials.<sup>177</sup> Another section of the Act authorizes local governments that discharge at least one million gallons of wastewater per day to seek approval of their “watershed assessments” from the Director of the EPD.<sup>178</sup> It is not clear the extent to which such watershed assessments could help finance projects in compliance with the District’s approved plans.

The District is a state entity, but local officials as well as appointed state representatives serve on its board. Local membership on the District’s board includes (1) the county commission chairperson or the chief executive officer of each county in the District with a population of 200,000 or more,<sup>179</sup> (2) the mayor of each municipality in the District with a population of 200,000 or more, and (3) a county representative—either a mayor or a county commission chairperson or chief executive officer—for those counties with less than a 200,000 population.<sup>180</sup> Of the ten state appointed members, the governor appoints six members, and the lieutenant governor and speaker of the House of Representative each appoint two members.<sup>181</sup> Local representatives thus enjoy a clear majority on the board. The Act further provides for the creation of technical coordinating committees, comprised of water and wastewater local officials and river basin advisory councils; these non-voting representatives provide advice and support.<sup>182</sup>

When Governor Barnes introduced the District legislation, he emphasized that the proposed state agency would not be another version of GRTA.<sup>183</sup> From the outset, advocates for the

177. *See id.*

178. *See id.* § 12-5-23(a)(1)(S).

179. *See id.* § 12-5-575(a)(1). Cobb, Clayton, DeKalb, Fulton, and Gwinnett counties have a population of 200,000 or more. *See Seabrook, supra* note 174 (providing an excellent summary of the features of the legislation creating the District).

180. *See* O.C.G.A. § 12-5-575(a)(2)-(3) (2001). The county representative from a county with less than a 200,000 population is selected by a caucus of the county commissioners and the mayors of municipalities within the county that have water withdrawal permits or wastewater discharge permits. *See id.* § 12-5-575(a)(3).

181. *See id.* § 12-5-575(a)(4)-(6).

182. *See id.* §§ 12-5-580(a), -581.

183. *See Seabrook, supra* note 162. In an interview, Governor Roy Barnes pointed out that unlike the air quality and transportation crisis that prompted the creation of GRTA, some existing water and wastewater systems in the Atlanta region provided “building blocks” for pursuing “a more federal-type approach” for managing water resources.

creation of a regional water planning agency stressed that, unlike GRTA's state appointed board, elected officials would constitute a majority of the District's governing board.<sup>184</sup> Because accountability for water policy and water related infrastructure costs rests primarily with local officials, many of the proposed legislation's supporters argued that they should possess a dominant position on the board.<sup>185</sup> Some political officials, however, criticized the proposed new agency as one that would remove powers traditionally exercised by counties and cities.<sup>186</sup> Environmentalists, journalists, and civic leaders, on the other hand, attacked the Governor's proposal as concentrating too much power in local governments, which they claimed had caused the Atlanta region's water quality crisis.<sup>187</sup>

The continuing water crisis and the proposed creation of the District generated a wide range of views with respect to the state's water policy. Several organizations and commentators shared the view that the state's water problems should be addressed on a comprehensive statewide, as opposed to a regional basis.<sup>188</sup> A report prepared by Research Atlanta found that a state plan provided greater assurance for the effective management of water resources and a supply of water adequate

*Fixing Atlanta's Water Woes Key to Georgia's Growth: An Interview with Georgia Gov. Roy Barnes*, ATLANTA BUS. CHRON., Oct. 6-12, 2000, at A41.

184. See Seabrook, *supra* note 163. Wayne Hill, chairman of Gwinnett County's Commission, pointed out that elected officials would have the job of explaining the need for increased water rates to address the Atlanta region's water problems. See *id.*

185. See Editorial, *House Vote Solidifies Equitable Water Planning*, *supra* note 168; Jim Wooten, *Focus on Big Picture: Water District Bill Wisely Avoids Taking GRTA's Path*, ATLANTA J. & CONST., Feb. 23, 2001, at A20.

186. See Seabrook, *supra* note 163 (reporting the concern of Atlanta metro county commission chairmen who served on the Clean Water Initiative Task Force that locally elected officials could lose their control over water issues upon the creation of a state water planning agency).

187. See Editorial, *Aim To Make State's Water Both Fishable and Drinkable*, ATLANTA J. & CONST., Mar. 19, 2001, at A10. The crisis was claimed attributable to the failure of the state and local governments to enforce water quality standards prescribed by federal law. See *id.* County commissioners were viewed as doing little in the past to curb water pollution caused by developers. See Editorial, *New Flag Provided Brightest Moment: 2001 Georgia Legislature*, ATLANTA J. & CONST., Mar. 23, 2001, at A20.

188. See Editorial, *Using Failed ARC Model Will Drown Water Policies*, ATLANTA J. & CONST., Feb. 26, 2001, at A8 (arguing that the state should have developed a statewide water plan before creating a regional district); Editorial, *Water Requires Statewide Initiative*, *supra* note 159 (reporting that the Association County Commissioners of Georgia, the Georgia Municipal Association, and Research Atlanta preferred a statewide water management strategy).



for future needs.<sup>189</sup> The urgency created by a federal court order mandating treatment efforts to clean up polluted streams in the Atlanta metro area caused business and political leaders to press for a regional solution that county and city officials favored.<sup>190</sup> Taking a first step to address these problems was considered better than failing to enact any water legislation.<sup>191</sup> Instead, the adoption of a statewide approach was deferred to a later day. The Georgia Senate adopted a resolution calling for the creation of a Joint Comprehensive Water Plan Study Committee of the General Assembly to develop a statewide comprehensive water plan within two years.<sup>192</sup>

Other water management plan advocates argued that the District's jurisdiction should have been formed along watershed and natural river basin boundary lines rather than political boundary lines.<sup>193</sup> They pointed out the Act's failure to vest the District with jurisdiction over the five-county area around Lake Lanier and Lake Allatoona in which rivers originate that supply much of the Atlanta region's water needs.<sup>194</sup> The Upper

189. See Charles Seabrook, *Several Groups To Offer Tactics: Proposals for Dealing with Pollution, Creating Agency Will Be Advanced in 2001 Legislative Session*, ATLANTA J. & CONST., Nov. 27, 2000, at E1. The Georgia Conservancy argued that a comprehensive state water plan was needed to address the following statewide concerns: water conservation, drinking water supplies, stream buffer zones, maintenance of natural stream flows, wetland protection, groundwater protection, and the transfer of water from one river basin to another. See *id.*

190. See Editorial, *Give All Georgians a Voice in Planning for Water Use*, ATLANTA J. & CONST., Mar. 12, 2001, at A8; Charles Seabrook, *Local Officials Want Details on Water Plan: Barnes' Proposal for District Meets Some Skepticism*, ATLANTA J. & CONST., Feb. 7, 2001, at B1.

191. See Editorial, *Empower the Front Line: Legislation for Proposed Water Planning District Fails To Provide for Fair Representation of the Governments and Taxpayers Involved*, ATLANTA J. & CONST., Feb. 8, 2001, at A26.

192. See SR 142, 2001 Ga. Gen. Assem. (adopted Mar. 15, 2001). Senate Resolution 142 states: "A resolution creating the Joint Comprehensive Water Plan Study Committee; to create the Water Plan Advisory Committee; and for other purposes." SR 142, as adopted, 2001 Ga. Gen. Assem., available at [http://www.legis.state.ga.us/Legis/2001\\_02/sum/sr142.htm](http://www.legis.state.ga.us/Legis/2001_02/sum/sr142.htm); see also Governor's Initiatives, at [http://www.ganet.org/governor/wp\\_summary.html](http://www.ganet.org/governor/wp_summary.html) (providing a summary and fact sheet in connection with the Water Planning Study Committee).

193. See Editorial, *Using Failed ARC Model Will Drown Water Policies*, *supra* note 188 (arguing that representatives of community watershed alliances or environmental organizations should have been given voting power on the District's board because they possess greater knowledge about controlling pollution than elected officials). The Editorial criticized the Act for its failure to include the area comprising the head waters of the five river basins supplying water in the District. See *id.*

194. See Editorial, *Give All Georgians a Voice in Planning for Water Use*, *supra* note 190.

Chattahoochee Riverkeeper criticized the Act's failure to address a major issue—whether Atlanta's spectacular growth and its need for a stable water supply would overwhelm efforts to reduce water pollution.<sup>185</sup> Critics of the Act further pointed out that the District's plans would be largely ineffective without adequate enforcement and funding.<sup>186</sup> Commentators expressed skepticism that the state's EPD would strictly enforce District-wide plans and cited the EPD's poor past enforcement record.<sup>187</sup> The fear that county commissioners serving on the District's board would continue to ignore "developers' blatant disregard for existing pollution prevention requirements"<sup>188</sup> also received mention.

#### *D. Summary*

During the last three legislative sessions, Georgia's General Assembly created GRTA, the Commission, and the District to manage transportation systems, preserve green space, and improve the quality and supply of water resources, respectively. Each of these public entities handles one aspect of the problems generated by rapid growth and sprawling patterns of development for which regional and statewide solutions must be found. This confusing mixture of public authorities leaves unresolved questions as to how these governmental bodies will coordinate their activities so as accelerate the use of smart growth techniques.<sup>189</sup> Nonetheless, these three different governmental structures provide us with an opportunity to examine which public authority best meets the objectives that prompted its creation. The question remains whether GRTA,

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185. See Lee Shearer, *Panel Reviews Plan for Water Supplies: Experts Question Legislature's Ability To Establish District in Atlanta: Ensure Future of Resource in Georgia*, AUGUSTA CHRON., Mar. 28, 2001, at C08.

186. See Seabrook, *supra* note 189. The Clean Water Initiative Task Force called for a \$2 billion clean water fund for the upgrade or construction of new sewage treatment plants and for other water quality improvement projects. See *id.* The Act did not provide for this funding. Enforcement of water regulations and laws is hindered by the lack of trained workers and confusion as to which federal, state, and local agencies should enforce the regulations. See Seabrook, *supra* note 72.

187. See Editorial, *Aim To Make State's Water Both Fishable and Drinkable*, *supra* note 187.

188. *Id.*

189. See Editorial, *State Must Dive, Not Dip, Into Serious Water Policy*, *supra* note 163.

the Commission, or the District can cause "local elected officials to think and act regionally in solving mobility problems."<sup>200</sup>

This Article argues that taxpayers, who must fund the costs of sprawl, should have a voice through their elected representatives in devising solutions to sprawl's effects.<sup>201</sup> Because the District Act makes elected officials the dominant decision makers on the District's board, this public authority model is preferred. The accountability of GRTA officials to Georgia's governor, however, should not be forgotten. The governor, an elected official, most likely will intercede should GRTA become isolated from political realities. A contest to be watched is whether GRTA's appointed board can act effectively as an enforcement mechanism to implement ARC's plans, or whether the District, with elected officials dominating its board, can move equally as fast or faster to develop a consensus to support the enforcement of future District plans.

GRTA and the District must explain to the public why costly decisions must be made in the next decade to alleviate the effects of sprawl and to manage unprecedented growth. The success of both authorities depends upon their ability to mobilize public support to discard the old patterns of growth without accountability. Clearly, they need to tell the public often, in a consistent, ongoing informational way, how uncoordinated local decision making can erode the quality of life in a region.

### CONCLUSION

The failure of urban centers to consolidate or incorporate growing suburban areas that surround them makes it difficult to coordinate or manage the public infrastructures necessary to combat the harmful effects of sprawl. The country's historic structure of small local governmental units provides opportunity for citizen participation and experimentation, but it usually does not prevent one governmental unit from imposing costs on neighboring municipalities by overloading

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200. See Wooten, *supra* note 185.

201. See Editorial, *Empower the Front Line*, *supra* note 191 (arguing that the District "must hold the promise of fair representation of the governments and taxpayers involved").

the infrastructure or using more than its fair share of natural resources. Many states have created state regulatory bodies that provide standards for the state supervised management of a natural resource such as land use. Georgia created separate state agencies, which do not operate on a comprehensive statewide basis, to manage transportation systems, to create more green space, and to assure improved water resources in the Atlanta metropolitan area.

This Article advocates the creation of metropolitan-wide or regional governments to manage natural resource protection more effectively by comprehensively addressing all of the quality of life issues that sprawl touches, irrespective of whether the environmental degradation involves the area's land, air, or water. This more limited geographical regulation enables each metropolitan area to be a strong participant in finding solutions to its sprawl related problems while addressing the area's unique characteristics. Because any comprehensive state approach to sprawl usually must satisfy the interests of both the urban and rural areas in the state, a regional program may avoid some of these geographical tensions that politically affect most state legislatures.

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